

**General Assembly**

Distr.: General
2 June 2005
English
Original: English/French

International Law Commission**Fifty-seventh session**

Geneva, 2 May-3 June and 4 July-5 August 2005

Preliminary report on the expulsion of aliens**By Mr. Maurice Kamto, Special Rapporteur****Contents**

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-6	2
II. The concept of the expulsion of aliens	7-13	4
III. The right to expel	14-16	6
IV. Grounds for expulsion	17-20	7
V. Rights related to expulsion	21-27	8
VI. Methodological issues	28-30	11
Annexes		
I. Draft workplan		12
II. Partial bibliography		14

* Reissued for technical reasons.



I. Introduction

1. The history of mankind has been characterized by mistrust of strangers and the temptation to withdraw from contact with them. There is no need to present a complete picture of this phenomenon, which affects all regions of the world. For example, the Greek city States sought to isolate themselves in an autarkic unit, believing that there was nothing beyond their walls but small tribes of savage barbarians.¹ In Sparta, aliens were banned from the city and accused of disrupting the public order established by law, *eunomia*; already, even in these ancient times, public order was invoked as a justification. From Sparta to Rome, the same attitude prevailed. Aliens were treated as enemies, as seen in the Latin adage: *hostis, hospes* (stranger, enemy).² Beyond the fortifications marking the boundaries of first the city and then the Empire — such as Hadrian's wall, dividing England from Scotland, the impressive ruins of which still exist — was the world of aliens denied the status of Romans, where only a banished Roman citizen would venture.

2. Today, the status of aliens is very different from what it was under Roman law; most modern, liberal legislation grants them full civil equality with nationals. During the first half of the twentieth century, there was a wave of openness to aliens in Latin America, to the point that then-Attorney-General Montt of Chile declared that, throughout Latin America, aliens had every advantage except access to high-level posts in Congress.³ Until recently, a similar policy was in force in some African countries. During the first two decades following their independence in the 1960s, it was not unusual for citizens of one African country to occupy high-level posts in the governments of other African States while retaining their nationalities of origin or for large groups of Africans from one country to settle and live peacefully in another African country without following the entry or sojourn procedures or acquiring the nationality of the host State. Such openness also existed among the old European nations, where it has gradually become more widespread as a result of the creation of the European Community.

3. Despite this liberal trend in contemporary legislation, however, the expulsion of aliens remains a common practice on every continent. On the grounds that the right to expel is an inalienable right of the State, States do not hesitate to use it as a shield against aliens whom they view either as a threat to national security or as a potential threat to public order in the host country. For example, this right has been widely invoked against the Chinese, who were the most commonly expelled, in the late nineteenth century, especially in America; at that time China had no place in the family of so-called "civilized" nations and thus could not appeal to the international community, especially as China itself repeatedly invoked the right to expel aliens.⁴ Moreover, the expulsion of aliens in time of war seemed perfectly normal at a time when war between States, even in cases not involving self-defence, was not

¹ See Jean Touchard et al., *Histoire des idées politiques* (Paris, Presses Universitaires de France (Thémis), 1959), vol. 1: "Des origines au XVIII^e siècle", pp. 9 and 10.

² See Baroness Elles (Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities), *Study of International Provisions Protecting the Human Rights of Non-Citizens* (United Nations Publication, Sales No. E.80.XIV.2).

³ See J. Irizarry y Puente, "Exclusion and expulsion of aliens in Latin America", *The American Journal of International Law* 36 (1942), pp. 252 and 253.

⁴ See A. H. Marsh, "Colonial expulsion of aliens", *American Law Review* 33 (1899), pp. 90 and 91.

prohibited by international law and when a declaration of war was automatically considered to make the people of the belligerent States each other's enemies. One late-nineteenth-century author wrote: "Nothing could be clearer than the right of the British executive in time of war to exclude the subjects of the unfriendly power."⁵

4. The spread of freedom and democracy and the development of humanitarian and human rights law have shown that a government can go to war even against the will of the majority of its people and have led jurists, States and public opinion to distinguish between combatants and non-combatants and between the acts of States and those of individuals. Nevertheless, the expulsion of aliens has become far more common in peacetime than in time of war. Thus, it is no longer a case of aliens from an enemy country versus aliens from a friendly country, nor are the friendly relations between two States necessarily at stake when aliens are expelled; the cause is more likely to be the expelling State's desire to solve a domestic problem. Whether aliens are used as scapegoats⁶ or are the victims of their own misdeeds, the desire to preserve public order is the primary motive for their expulsion.⁷ The frequent discrepancies between State practice and international law do pose problems in this area.⁸

5. The topic of the expulsion of aliens is of particular interest today insofar as it reveals the contradiction between technical and economic globalization, which promotes greater trade flows between nations, and the raising of barriers based on sovereignty which hinder or block the movement of persons by creating selection procedures for distinguishing between those who have the right to enter and reside in the territory of a State or group of States, and those who lack that right. With the development and rapidity of modern means of transport, migratory flows from one country to another and from one part of the world to another have literally exploded, intensified by development inequalities between nations which lead more and more marginalized people from poor countries to seek entry into rich countries in the hope of a better future.⁹ But, paradoxically, national borders are becoming less permeable and the manner in which aliens are received varies according to all manner of considerations, including the applicants' economic potential, their scientific expertise and even their religious beliefs. The unprecedented scope of international terrorism and the ongoing threat that it represents only make matters worse; they have aggravated national tensions that had long been based primarily on social and economic egotism and xenophobia. The key problem in this area is how

⁵ Ibid., p. 91.

⁶ In 2004, for example, several hundred Cameroonians were expelled from Equatorial Guinea because the regime in power in that country was at risk of destabilization by foreign mercenaries (see the *Cameroon Tribune*, 15 March 2004).

⁷ One of the most recent cases is the expulsion on 19 March 2005 of three clergymen of the Universal Church of the Kingdom of God, a religious group founded in Brazil, because the group was burning copies of the Bible in public (source: Radio France Internationale, 19 March 2005).

⁸ See Charles de Boeck, "L'expulsion et les difficultés internationales qu'en soulève la pratique", *Recueil des Cours de l'Académie de la Haye*, vol. 18 (1927-111) (Paris, 1928), pp. 443-650.

⁹ To offer an example, the aforementioned study of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities noted, more than 20 years ago, that over 10 million people had emigrated from Europe and another 10 million had immigrated to the European Community since 1945; over 7 million people had been transferred from India to Pakistan since 1947; and about 5 million migrants were working in Africa each year (op cit., p. 1, para. 15).

to reconcile the right to expel, which seems inherent in State sovereignty, with the demands of international law and, in particular, the fundamental rules of human rights law.

6. This preliminary report seeks to provide an overview of the topic by demonstrating the legal issues that it raises and the problems associated with their consideration. The Special Rapporteur was of the view that the advantage, and the very essence, of a preliminary report are to present the topic to be studied in order to explain how he proposes to proceed and to seek guidance from the Commission in that regard. A preliminary report formulates issues and suggests approaches rather than offering final solutions embodied in positive law or, where applicable, suggested by the progressive development of international law. It is in this spirit that the Special Rapporteur proposes, in this report, first to set forth the issues raised by the very idea of the "expulsion of aliens" (sect. II); then to provide an overview of the right to expel in international law (sect. III), the grounds for expulsion invoked in practice (sect. IV) and the rights at stake during expulsion (sect. V); and, lastly, to examine the methodological problems associated with consideration of the topic (sect. VI). The manner in which the Special Rapporteur proposes to conduct the study of this topic will then be described through a workplan which is placed before the Commission for discussion, provided in annex I to the preliminary report; annex II contains a bibliography which in no way claims to be exhaustive; its purpose is simply to offer a source of supplementary information which may help to enrich the Special Rapporteur's future work.

II. The concept of the expulsion of aliens

7. The topic, "the expulsion of aliens", is based on two ideas: that of "expulsion" and that of "alien", which must be defined before an attempt is made to identify the rules of international law relating thereto. Because the concept of expulsion can be understood only in relation to that of alien, the latter will be discussed first. "Alien" means an individual who does not hold the nationality of the host country or the country of residence but who is bound by a link of nationality to the State from which he or she comes — the State of origin — or who holds no nationality at all and is thus in a situation of statelessness.¹⁰

8. Viewed as a fact, expulsion may be understood simply as a forced border crossing or exit from the territory of a State by an individual who is compelled to do so. But this description does not provide an adequate legal determination of the concept of expulsion; its legal definition requires particularly close study because it seems to be interwoven with other similar concepts from which it cannot easily be separated. It appeared to the Special Rapporteur that a definition of the concept of expulsion under international law could be proposed only after comparing it with other concepts such as the displacement of populations, exodus, deportation, extradition, refoulement, non-admission, exclusion from a territory, "extrajudicial transfer", "extraordinary transfer", removal from a territory and escort to the border.

¹⁰ See, *inter alia*, Bruno Nascimbene and Alessia di Pascale, "Rapport de synthèse et conclusions", in *L'éloignement et la détention des étrangers dans les Etats membres de l'Union européenne*, ed. B. Nascimbene (Milan, Giuffrè, 2001), p. 533 and Pierre Marie Dupuy, *Droit international public*, 7th ed. (Paris, Dalloz, 2004), p. 129.

9. Most of these concepts share common traits with that of expulsion, but they differ from it in several ways. For example, the same legal concept cannot be applied to both the *MV Tampa* case, which involved a ship flying the Norwegian flag which the Australian and Indonesian Governments would not allow to dock because they did not want to accept the hundreds of Afghan and Iraqi asylum-seekers on board,¹¹ and the March 2004 expulsion of hundreds of Africans of various nationalities from an African country of which some of them were longtime residents.¹²

10. We can easily agree that persons displaced within their own country do not fall within the scope of this topic. Non-admission or refusal of admission — a situation in which a person who has not yet entered a State's territory is prevented from doing so — lies on the margins of the topic: it will have to be decided whether it should be included or not. It will also have to be determined whether a person who enters a State's territory clandestinely and is "removed" from it should be deemed to have been expelled or refused entry and whether the topic should include cases of expulsion by a victorious Government in the context of a conflict between two peoples, each seeking exclusive control of the same territory — for example, the hundreds of thousands of Palestinians who were forced to leave or were expelled from their homes and land when the State of Israel was established in 1948, and again following the occupation of a portion of their territory after the Six Day War in 1967.

11. In this preliminary report, the Special Rapporteur does not intend to embark on a semantic comparison of each of the aforementioned concepts with the central concept of expulsion or to propose responses to the various concerns expressed above. One of the objectives of the first report will be to clarify these concepts, taking the Commission's guidance into account in determining the scope of the concept of the expulsion of aliens for the purpose of developing a set of draft articles. In this report, it will suffice to mention the plethora of terms used in this field, both in legal theory¹³ and in the legislation of certain countries,¹⁴ and to propose an entirely provisional definition of the concept of expulsion with a view to delimiting the scope of the preliminary consideration and discussion of the topic.

¹¹ On the *MV Tampa* case, see Amnesty International's annual report on the Pacific region of 25 August 2002, entitled Australia-Pacific: Offending human dignity — the "Pacific Solution" (<http://web.amnesty.org/library/index/engasa120092002>).

¹² See the expulsions from Equatorial Guinea mentioned above.

¹³ For example, scholars speak of removal from a territory (see Rudolph d'Haem, *La reconduite à la frontière des étrangers en situation irrégulière* (Paris, Presses Universitaires de France (Que sais-je), 1997), p. 3) and of deportation (see "Governing Rule 12: Expulsion or Deportation of Aliens"), in *Studies in Transnational Legal Policy* 23, 1992, pp. 12 et seq.

¹⁴ See, for example, the French Act of 9 September 1986 on conditions governing the entry and stay of aliens in France, in which the terms "expulsion", "escort to the border" and "inadmissibility" are used (Act No. 86-1025 of 9 September 1986, *Juriclasseur Périodique* (J.C.P.), 1986 III, 59212, and *Journal Officiel de la République française* (J.O.R.F.), 12 September 1986).

12. Following the reasoning of domestic law, "expulsion" can refer to an administrative policy measure enjoining an alien to leave a territory.¹⁵ Under French law, for example, the term "expulsion" is used in reference to aliens whose presence in French territory, even if legal, constitutes a "serious threat to public order".¹⁶ This strict definition of the concept excludes several other measures for the removal of aliens which, in the Special Rapporteur's view, should fall within the scope of the concept within the framework of this topic. The term "removal" seems, at first glance, preferable because it is more comprehensive, but although it is used by some theorists,¹⁷ it has the disadvantage of not being a consecrated legal term.

13. The Special Rapporteur believes that for the purposes of this topic, the term "expulsion" should be retained but should be interpreted broadly so as to include all measures for removing aliens from the territory of the expelling State. From the point of view of international law, it should be explained that such a measure must be a unilateral legal act — that of a State — and that it is a compulsory measure targeting an individual or group of individuals. Thus, "expulsion" might be provisionally defined as a legal act in which a State compels an individual or group of individuals who are nationals of another State to leave its territory. The study will show whether the expelled person's physical crossing of the expelling State's border corresponds to the concept of expulsion, or whether it is a consequence thereof, and whether a distinction should be made between the legal act of expulsion and the expelled person's physical act of crossing the border or leaving the territory of the State in question.

III. The right to expel

14. The monitoring by a State of its borders is intended not only to warn it of any invasion by foreign armed forces, but also to protect it from infiltration by aliens seeking peacefully to enter the territory to take advantage of living standards within it.¹⁸ International law therefore recognizes the discretionary power of each State to grant or refuse entry to its territory. Equally, international law recognizes the right of the State itself to set the conditions for the entry and residence of aliens in its territory.¹⁹ In the words of a late nineteenth century author "Every country has a right to judge of the terms upon which it will admit foreigners within its borders ... The exercise of that right is one of which no nation has any right to complain".²⁰

¹⁵ *Dictionnaire de droit international public*, ed. Jean Salmon (Brussels, Bruylant, 2001), p. 488.

¹⁶ See the report of François Julien-Laferrrière and Sophie de Sèze in Nascimbene (ed.), *op. cit.*, pp. 183 et seq.

¹⁷ *Ibid.*; see also the title of the book.

¹⁸ See Roman Rewald, "Judicial control of administrative discretion in the expulsion and extradition of aliens", *American Journal of Comparative Law* (Supp., 1986), p. 41.

¹⁹ See V. J. Irizarry y Puente, "Exclusion and expulsion of aliens in Latin America", *op. cit.*, p. 254.

²⁰ A. H. Marsh, "Colonial expulsion of aliens", *op. cit.*, p. 90.

15. Logically, the obverse of the right to regulate the admission or non-admission of aliens is the right to expel them. Every State fully enjoys that right, which is inherent in its sovereignty. It is a principle of customary international law, which is rarely contested.²¹ As Shigeru Oda once said:

"The right of a State to expel, at will, aliens, whose presence is regarded as undesirable, is, like the right to refuse admission of aliens, considered as an attribute of the sovereignty of the State".²²

16. National laws, international jurisprudence and doctrine are in agreement that this right is not an absolute right of the State.²³ The State resorting to expulsion is bound to invoke the grounds used to justify it.²⁴ Although every State in fact has the right freely to determine the grounds for expelling an alien according to its own criteria, "the right of expulsion still must not be abused".²⁵ The State's right to expel aliens therefore falls within the realm of international law.

IV. Grounds for expulsion

17. There are always grounds for the expulsion of an alien by a State, whether they are avowed or unavowed. It is agreed that some grounds for expulsion are not contrary to international law. This is generally the case with breaches of "law and order", "public safety" or "national security". In fact, any notion as vague as that of law and order sometimes gives rise to many different, often very broad, interpretations including acts that could not be considered the basis for lawful expulsion.

18. Grounds for expulsion may vary from one country to another. In the United States of America, for example (the Immigration and Nationality Act), in force in 1965 excluded from entry into American territory aliens having a psychopathic personality or suffering from epilepsy or mental retardation. In two famous cases relating to this Act, *Boutilier v. INS*²⁶ and *In re Longstaff*,²⁷ the Supreme Court decided to refuse admission to and, furthermore, to order the expulsion of, homosexual aliens on the ground of sexual deviation.

19. A study of a variety of national laws shows an even wider range of grounds for expulsion. For example, expulsion may be motivated by the fact that, among other things, the alien is a threat or a danger to public peace; jeopardizes relations between the country concerned and other States; seeks to foment change in the political order through violent means; espouses doctrines that are either subversive

²¹ In this connection, it is worth noting the marginal opinion of M. Tchernoff, "Protection des nationaux résident à l'étranger", *Revue de droit internationale*, vol. XX, p. 45, which states: "Few persons nowadays maintain that the right to expel aliens is a normal attribute of a State exercising its civilizing function".

²² In M. Sørensen (ed.), *Manual of Public International Law*, 1968, p. 482.

²³ See V. Bluntschli, *Droit internationale codifié*, article 383; *Oppenheim's International Law*, 9th edition, vol. 1, p. 940.

²⁴ *Boffolo case, R.S.A.*, vol. X, p. 533; see also *Paquet*, *ibid.*, vol. IX.

²⁵ S. Oda, *op. cit.*, p. 482.

²⁶ 387 U.S. 118 (1967) and the critical note "The Immigration and Nationality Act and the exclusion of homosexuals: *Boutilier vs. INS Revisited*", *Cardozo Law Review*, 1981, p. 359 et seq.

²⁷ 716 F.2d 1439 (5th Cir. 1983).

or contrary to the established order; is unemployed, without a fixed abode or without a livelihood; is a criminal or is being prosecuted; or is suffering from an infectious or serious illness, is mentally deficient, a beggar, a prostitute, an adventurer or an illicit trafficker. Such grounds are found in the law of Latin American countries for the period between 1907 and 1925.²⁸ There is also the expulsion of Roma from several European and Latin American countries; the expulsion of aliens from some countries because of their ideological convictions, in particular during the cold war;²⁹ or the expulsion of various persons, such as homosexuals, because of their sexual behaviour.³⁰

20. The international context has evolved and, with it, so have the rules of international law. To a large extent, the rules relating to the protection of fundamental human rights no longer fall within the purview of States and this affects the law applicable to the expulsion of aliens. The question to be answered therefore is which of the many grounds for expelling aliens are admissible under international law, or *a contrario*, which are prohibited. Yet how can this question be answered effectively, when what is admissible or tolerated in one State or region of the world may not necessarily be so elsewhere? The lawful or unlawful nature of grounds for expulsion follows the evolution of international legal standards concerning the protection of human rights. We must therefore be able to determine the relevant universal standards.

V. Rights related to expulsion

21. The exercise of the right to expel brings into play the rights of the aliens being expelled and those of their State of origin. The rights of expellees vary according to whether a case concerns the expulsion of an individual, collective expulsion or the expulsion of migrant workers.

22. Expulsion of an individual, which is the most commonly practised form, usually involves the rights of an individual. Those rights may derive either from the expelling State's national legislation or from international human rights law. In that regard, the lawfulness of the expulsion depends on two factors: conformity with the expulsion procedures in force in the expelling State and respect for fundamental human rights.

23. With regard to the expulsion procedure, a logical rule holds that if a State has the right to regulate the conditions for immigration into its territory without thereby infringing any rule of international law, it also is obliged to act in conformity with

²⁸ Such grounds arise in the law of Brazil (1907), Panama (1914), Chile (1919), Columbia (1920) and the Bolivarian Republic of Venezuela (1925); see Irizarry y Puente, *op. cit.*, p. 256, notes 22-34.

²⁹ This refers, in particular, to the expulsion of communists from the United States of America during the McCarthy era.

³⁰ See Samuel M. Silvers, "The exclusion and expulsion of homosexual aliens", *Columbia Human Rights Law Review*, 1983-1984, p. 295 et seq.

the rules which it has adopted or to which it has agreed³¹ concerning the expulsion of persons whom it deems that it cannot receive or retain in its territory. In such cases, the State is bound by one of the following adages: *pacta sunt servanda* and *tu patere legem quam ipse fecisti*, or both. This requirement concerning respect for procedures provided for by law may therefore be considered an obligation under general international law and not strictly a treaty obligation or an obligation under domestic law alone. In the absence of a treaty, it might be reasonable to claim that the requirement has a basis in customary law, or to consider it a general legal principle. With regard to personal rights to be respected in cases of expulsion, international law is applicable through both customary and treaty law. The obligations of the territorial State under customary international law apply to all aliens regardless of nationality. They are grouped around the rather imprecise notion of a "minimum standard", which is based on the idea that nowadays international law affords aliens a minimum of guarantees, even though it is difficult to specify what they are.³² What is known is that the requirement concerning respect for the dignity of the alien being expelled is one of the standards guaranteed by international law with regard to natural persons. The assets held by the expelled alien in the territory of the expelling State, are protected by the relevant rules of international law. However, protection of the alien who has been or is being expelled, as well as his assets, may be enhanced by treaty norms: those contained in international human rights agreements to which the expelling State is a party and those provided for by special agreements relating to the protection of assets and investments drawn up between the expelling State and the alien's State of origin where such special agreements exist.

24. With regard to collective expulsion, the principle deriving from international law prohibits it,³³ although it is still practised by some States.³⁴ The question is whether this prohibition is absolute. Despite the brevity of the provisions addressing it, the matter is open to doubt. It might be difficult, for example, to raise this principle to object where a group of nationals of one State jeopardized the safety of, or posed a genuine threat to, a second State in which they were residing and which

³¹ See article 13 of the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966 (resolution 2200 A (XXI)); see also article 31 of the Convention relating to the Status of Stateless Persons, of 1954; article 22 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990; and at the regional level: article 22 (6) of the American Convention on Human Rights, of 1969; the African Charter of Human and People's Rights, of 1981; and article 1 of Protocol No. 7, of 1984, to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

³² See P. M. Dupuy, *op. cit.*, p. 131.

³³ See article 4 of Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (freedom of movement and of choice of residence; prohibition of exile, of collective expulsion of aliens and of imprisonment for a civil debt) which was signed in Strasbourg, France, on 16 September 1963 and entered into force on 2 May 1968 (text published in *International Legal Materials*, 1967, p. 27).

³⁴ See, for example, the collective expulsion of the Indo-Pakistanis from Uganda under Idi Amin during the 1970s (on this topic, see Michael Twaddle (ed.), *Expulsion of a minority: essays on Ugandan Asians* (London, Athlone Press, 1975), p. 240); the expulsion of groups of Africans of different nationalities (in particular Beninese and Ghanaians) from Nigeria in the 1980s (see A. A. Afolayan, "Immigration and expulsion of ECOWAS aliens in Nigeria", *International Migration Review*, 1988, pp. 4-17); and footnote 6 above, on the case of the collective expulsion of hundreds of Cameroonians from Equatorial Guinea in March 2004.

was engaged in armed conflict with the first State. We must consider whether even in this case it is truly necessary to study the individual situation of each member of such a group if the constituent fact underlying the grounds for expulsion is sufficient to provide a basis for collective expulsion.

25. The case of migrant workers falls within a special regime established by the International Convention on the Protection of the Rights of All Migrant Workers and Their Families adopted by the United Nations General Assembly on 18 December 1990.³⁵ Article 22 of the Convention sets out in considerable detail the conditions for expelling such persons. It prohibits measures of collective expulsion against migrant workers and members of their families and orders that each case of expulsion should be examined and decided individually. The procedure to be followed in cases of expulsion, which is described in minute detail, reinforces the guarantees that protect the rights of expellees, including sheltering them from mere administrative decisions. It guarantees the expellees' right to receive information, to submit arguments against their expulsion and to be compensated if a decision of expulsion that has already been executed is subsequently annulled.

26. In addition, the expulsion of aliens establishes the right of the State of origin to exercise its jurisdiction with respect to the personal protection of its nationals residing outside its borders. In that case, it is authorized by international law to protect its nationals by providing diplomatic protection through judicial or non-judicial means. Diplomatic protection is a separate subject, and the Commission is currently completing a study of it. The Special Rapporteur therefore intends now only to explore the ways in which this institution might be used by an expellees' State of origin. The *Diallo* case,³⁶ which Guinea brought before the International Court of Justice in 1998, showed that the institution of diplomatic protection is not as outmoded as some would hold, but remains in some cases the only means whereby a State may effectively protect the interests of one of its nationals who has been expelled from another State.

27. In that connection, the Special Rapporteur believes that it would be worthwhile to examine all the legal consequences of expulsion within the context of the responsibility of the expelling State and the ensuing compensation due for the injury suffered by the persons who were expelled improperly (rules of procedure) or on grounds contrary to the rules of international law (substantive rules). This of course would not involve studying (again) the general rules concerning the responsibility of States for internationally wrongful acts — it is common knowledge that the Commission completed its work on that question in 2001 — but rather determining how to take advantage of those rules to devise a complete regime under international law relating to the expulsion of aliens. It will no doubt become apparent that for many expellees the major concern is not simply the possibility of compensation, but also enjoyment of the right to return to the countries from which they were improperly expelled. This is entirely different from the cases of people who have been expelled with respect for due process and in conformity with international law.

³⁵ For a summary of the Convention and the status of ratifications in 1999, see David Weisbrodt, "Working paper on the rights of non-citizens", United Nations document E/CN.4/Sub.2/1999/7 (1999), paras. 47-49.

³⁶ ICJ, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, filed on 28 December 1998; pending.

VI. Methodological issues

28. The topic of "the expulsion of aliens" derives from both domestic and international law. In fact, it involves national rules issued by the State in connection with its territorial sovereignty, and rules of international law, either general or specific and treaty-related, concerning the protection of human rights. National practice and the comparative law perspective will play a fundamental role in the identification of rules that the international community could be considered to hold in common and thus to be codifiable as international legal norms. Such national practice would be defined by comparing the available or accessible legislation and legal precedents of most States, as well as of international regional human rights courts. This transnational and comparative approach is all the more appropriate inasmuch as even some national courts take comparative law as the basis for their decisions in cases relating to the expulsion of aliens. Thus, in the *Habeas Corpus d'Alfredo Rossi* case, for example, the Federal District Court of Rio de Janeiro invoked the laws of several European countries to substantiate the existence of the right to expel an alien on grounds of public and political order: "Considering that the right to expel an alien, by reason of public and political order, has been exercised, and still is, by all Governments; and is expressly found in French, Swiss, Danish, Spanish, Dutch and English legislation".³⁷

29. In this connection, the case law of the European Commission of Human Rights, the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights offers an abundance of rich material that can be mined to extract some hard and fast rules on the subject.

30. There is one question, in particular, on which the Special Rapporteur would like to have the opinion of the members of the Commission, namely how to deal with existing treaty rules on the issue. Should they be taken up again in the draft articles to be drawn up in the future or should those articles be limited to bridging any legal gaps? Should the draft articles be restricted to the formulation of basic principles relative to the expulsion of aliens or, on the contrary, propose an entire legal regime? The Special Rapporteur is inclined to believe that draft articles on this topic would be of interest only if they presented as exhaustive a legal regime as possible, founded on general principles forming the legal basis for the expulsion of aliens under international law. This inclination has led him to propose the draft workplan attached to this preliminary report.

³⁷ *Revista de Direito*, 536-541, quoted by J. Irizarry y Puente, op. cit., p. 258.

Annex I

Draft workplan

Part 1: General rules

I. Scope

A. Expulsion and related concepts

1. Expulsion and exile
2. Expulsion and population displacement
3. Expulsion and population exodus
4. Expulsion and deportation
5. Expulsion and extradition
6. Expulsion and refoulement at the border
7. Expulsion and non-admission
8. Expulsion and "extrajudicial transfer"
9. Expulsion and "extraordinary transfer"
10. Expulsion and inadmissibility
11. Expulsion and escort to the border

B. Definitions

1. Alien
2. Expulsion
3. Expulsion of aliens

II. General Principles

A. A right inherent in State sovereignty

1. A customary rule
2. A rule which is not absolute

B. A right to be exercised subject to respect for the fundamental rules of international law

1. Principle of non-expulsion of nationals and stateless persons
2. Principle of respect for fundamental human rights during expulsion proceedings
3. Principle of prohibition of collective expulsion

C. Grounds for and lawfulness of expulsion

1. Traditional grounds recognized under international law
 - (a) Public order

- (b) State security
- (c) Higher interests of the State?
- 2. Contingent grounds debatable under international law
 - (a) Religious belief
 - (b) Origin
 - (c) Sexual behaviour
 - (d) Physical and mental condition
 - (e) Other

Part 2: Expulsion regimes

- I. Individual expulsion
 - A. Procedure
 - B. Lawfulness
- II. Collective expulsion
 - A. Principle of prohibition
 - B. Limits of the principle
- III. Specific case of migrant workers
 - A. Principle of prohibition of collective expulsion
 - B. Conditions for expulsion

Part 3: Legal consequences of expulsion

- I. Rights of expelled persons
 - A. Right to respect for fundamental rights to dignity
 - B. Right to return to the territory of the expelling State
 - C. Right to compensation for any harm suffered
- II. Rights of the State of origin: diplomatic protection
 - A. Diplomatic protection through non-judicial means
 - B. Diplomatic protection through judicial means
- III. Responsibility of the expelling State
 - A. The principle
 - B. The implications

Annex II

Partial bibliography

I. Ouvrages et articles

Abraham, Ronny. La reconduite à la frontière des demandeurs d'asile. *RFDA*, janvier-février 1992, p. 90-103.

Afolayan, A. A. Immigration and expulsion of ECOWAS aliens in Nigeria. *International Migration Review*, 1988, p. 4-27.

Andriamirado, Sennen. Les « Palestiniens » de l'Afrique de l'Ouest. *Jeune-Afrique-Économie*, Je 3, 1996, p. 74-77.

Barreau du Québec. Développements récents en droit de l'immigration. Montréal, Yvon Blais.

Barustsiski, Michel. Chronique de jurisprudence canadienne en droit des réfugiés (1992) – Expulsion pour cause de sécurité publique : une protection réduite. *Documentation-Réfugiés*, n° 217.

Beattle, C. S. The 1980 lei do Estrangeiro: the return of traditional defenses against expulsion in Brazilian immigration law. *Texas International Law Journal*, 1983, t. 18, p. 151-173.

Bendermacher-Geroussis, Emile et Alexandre Bendermacher-Geroussis. Le contrôle juridictionnel du pouvoir discrétionnaire dans l'expulsion et l'extradition des étrangers. *Revue hellénique de droit international*, 1985-1986, t. 38 et 39, p. 375-388.

Bès de Berc, Emmanuel. *De l'expulsion des étrangers*, S.n, 1888.

Bhabha, Jacqueline et Geoffrey Coll. *Asylum law practice in Europe and North America – A comparative analysis by leading experts*, Washington, Federal Publications, 1992.

Bodtcher, Anne la Cour et Jane Hughes. The effects of legislation imposing fines on airlines for transporting undocumented passengers, in Kjaerum M, 1991, p. 6-13.

Brunelle, Christian. La primauté du droit : la situation des immigrants et des réfugiés en droit canadien au regard des chartes et des textes internationaux. *Cahiers de droit*, 1987.

Bruno, Genevois. L'entrée des étrangers en France : le rappel des exigences constitutionnelles (À propos de la décision du Conseil constitutionnel, n° 92-307 DC, 25 février 1992). *Revue française de droit administratif*, 1992, 8 (2), p. 185-201.

Camiglio, Christina. Reciprocity in the treatment of aliens in Italy: good reasons for its abolition. *The Italian Yearbook of International Law*, 2003, t. 11, p. 125-137.

Carrier, Jean-Yves. L'expulsion collective d'étrangers. *Les mesures relatives aux étrangers à l'épreuve de la Convention européenne des droits de l'homme* : actes du séminaire du 21 mars 2003, Pierre Lambert et Christophe Pettiti (éd.).

Carlier, Jean-Yves. Droit des étrangers (chronique annuelle de jurisprudence belge). *Le journal des procès*, n° 218 et 219.

Centre d'études et de recherche de droit international et de relations internationales de l'Académie de droit international de La Haye. *Le droit d'asile*. Dordrecht, Martinus Nijhoff, 1990.

Chadbourne, Julie. *Discretion without bounds: the arbitrary application of Spanish immigration law*. Human Rights Watch, juillet 2002, 23 p.

Chalanton, Paul. La nationalité néerlandaise (Pays-Bas et colonies) : nationalité et service militaire; police des étrangers : admission, expulsion et surveillance des étrangers : lois traduites et annotées d'après les plus récents documents officiels : avec un appendice et un index alphabétique. Boucher, 1928.

Chaltiel, Florence. Le juge administratif, juge de l'immigration. *R.D.P.U.*, 2000, n° 1, p. 154-193.

Chantre, Alfred. Du séjour et de l'expulsion des étrangers. Genève, 1891.

Chevallier, Jacques. Conseil constitutionnel, 28 juillet 1989, Décision n° 89-281 DC, p. 619-627.

Cholewinski, R. Strasbourg's hidden agenda?: the protection of second generation migrants from expulsion under article 8 of the European Convention of Human Rights. *Netherlands Quarterly of Human Rights*, 1994, p. 287-306.

Clark, Tom. Human rights and expulsion: giving content to the concept of asylum. *International Journal of Refugee Law*, p. 189-204.

Columbia-Human-Rights-Law-Review. The exclusion and expulsion of homosexual aliens. 1984, p. 295-332.

Costa-Lascouz, Jacqueline. Les politiques migratoires à l'épreuve des faits. Recueil des cours de l'Institut des droits de l'homme, Strasbourg, 1992, 13 p.

Costa-Lascouz, Jacqueline et Patrick Weil. Logiques d'États et immigration. Paris, Kimé.

Crépeau, François. Annotation de l'arrêt du Conseil d'État, 13 décembre 1991, Préfet de l'Hérault c. Dakoury. *Revue critique de droit privé*, 1992.

Crépeau, François. Quel statut pour l'étranger absolu? Fondements d'une protection du demandeur d'asile. *Office français de protection des réfugiés et des apatrides*, 1993.

Crépeau François, Droit d'asile : de l'hospitalité aux contrôles migratoires. Collection de droit international, Bruxelles, Bruylant, 1995.

Cugnin, Robert. *L'expulsion des étrangers*, S.n, 1902.

Darut, Joseph André. *De l'expulsion des étrangers : principe général – applications en France*, S.n, 1912.

De Boeck, C. L'expulsion et les difficultés internationales qu'en soulève la pratique. *RCADI*, 1927, t. III, p. 443-650.

Dent, John A. Research paper on social and economic rights of non-nationals in Europe. *European Council on Refugees and Exiles (ECRE)*, p. 1-130.

De Zayas, A. M. *Nemesis at Potsdam: the Anglo-Americans and the expulsion of the Germans: background, execution, consequences*. Routledge & Kegan Paul, Londres/Boston, 1979, 268 p.

D'haém, Rudolph. *La reconduite à la frontière des étrangers en situation irrégulière. Que sais-je?*, 1^{re} édition, janvier 1997, p. 3- 5.

Djik, P. van. Protection of « integrated » aliens against expulsion under the European Convention of Human Rights, in Guild, E. et P. Minderhoud (dir.), *Security of residence and expulsion: protection of aliens in Europe*. *Kluwer Law International*, La Haye/Boston, 2001, p. 23-40.

Dockx, Véronique. L'accès au territoire, la détention et l'expulsion des mineurs étrangers non accompagnés à la lumière de la loi sur la tutelle. *Revue du droit des étrangers*, 2004, p. 167-181.

Donahue, Bill. Life in Limbostan: stranded in a Spanish outpost in Africa, illegal immigrants from around the globe await the blessing of expulsion, *Mother Jones*, n° 5, septembre/octobre 2003.

Economist. War with Milosevic, 3 avril 1999, p. 17-21.

Eitzwiller, Nancy G. Le traitement des demandeurs d'asile aux ports d'entrée et le concept de « zones internationales ». ANAFE, Paris, avril 1992, 18 p. Document présenté au colloque sur « le statut juridique de la zone internationale », 10 et 11 avril 1992. Evans, A. C. United Kingdom Courts and European Community Law governing the exclusion/Expulsion of migrants. *Public Law*, 1981, p. 497-510.

Fabre-Alibert, Véronique. Réflexions sur le nouveau régime juridique des étrangers en France. *Chronique administrative, R.D.P.U.*, 1994, n° 2, p. 1165-1195.

Fatholahzadeh, A. et L. Tinti. Luxembourg, in Nascimbene, Bruno, (éd.), *Expulsion and Detention of Aliens in the European Union Countries*. Giuffrè, 2001, p. 377-412.

Favoreux, L. *Chronique constitutionnelle française*. *R.D.P.U.*, 1980, n° 2, p. 631-1637.

Fernandez Kelly, Patricia. Rethinking citizenship in the Global Village: Reflection on immigrants and the underclass, paper presented at the summer course on refugee issues, York University, 1993.

Fitzpatrick, J. The post-exclusion phase: extradition, prosecution and expulsion. *International Journal of Refugee Law*, 2000, p. 272-292.

Fordham International Law Journal. State responsibility for constructive wrongful expulsion of foreign nationals. *Fordham International Law Journal*, t. 11, été 1988, p. 802-838.

Fordham Law Journal. Deportation: Procedural rights of re-entering permanent resident aliens subjected to exclusion hearings. 51, *F.L.R.* 1339, mai 1983.

Frelick, Bill. Haitian Boat Interdiction and Return: First Asylum and First Principles of Refugee Protection. *Cornell International Law Journal*, 1993, p. 675-694.

Genevois, Bruno. Un statut constitutionnel pour les étrangers. *RFDA*, n° 9, septembre-octobre 1993, p. 871-900.

Goodwin-Gill, Guy S. *International Law and the Movement of Persons between States*. Oxford, Clarendon Press, 1978.

Goodwin-Gill, Guy S. The Haitian Refoulement Case: A Comment. *International Journal of Refugee Law*, 1994, p. 103-109.

Grable, David-M. *Personhood under the due process clause: a constitutional analysis of the illegal immigration reform and immigrant responsibility act of 1996*. Cornell Law Review, 1998.

Groenendijk, Kees. Long-term immigrants and the Council of Europe, in Guild, E. et P. Minderhoud (dir.), *Security of residence and expulsion: protection of aliens in Europe*. *Kluwer Law International*, La Haye/Boston, 2001, p. 7-22.

Guild, Elspeth. Security of residence and expulsion of foreigners: European community law, in Guild, E. et P. Minderhoud (dir.), *Security of residence and expulsion: protection of aliens in Europe*. *Kluwer Law International*, La Haye/Boston, 2001, p. 59-80.

Guild, E. et P. Minderhoud. Security of residence and expulsion: protection of aliens in Europe. *Kluwer Law International*, La Haye/Boston, 2001, 249 p.

Guimezane, Nicole. La nouvelle loi sur l'entrée et le séjour des étrangers en France (loi n° 89-548 du 2 août 1989). *Semaine juridique*, n° 3, 1987, p. 3270.

Hailbronner, K. Expulsion of aliens from the Federal Republic of Germany. Reports on German Public Law and Public International Law, 1986, p. 97-113.

Harvey, C. Expulsion, national security and the European Convention. *European Law Review*, 1997, p. 626-633.

Harvey, Colin. Promoting insecurity: public order, expulsion and the European Convention on Human Rights, in Guild, E. et P. Minderhoud (dir.), *Security of residence and expulsion: protection of aliens in Europe*. *Kluwer Law International*, La Haye/Boston, 2001, p. 41-57.

Hartmann, Rainer. Yemeni exodus from Saudi-Arabia: the gulf conflict and the ceasing of the workers' emigration. *Journal of South Asian and Middle Eastern Studies*, 1995, p. 38-52.

Haunum, Hurst. *The Right to Leave and Return in International Law and Practice*. Dordrecht, Martinus Nijhoff, 1987.

Helton, Arthur C. The Malaysian Policy to Redirect Vietnamese Boat People: Non-refoulement As a Human Rights Remedy. *New York Journal of International Law and Politics*, 1992, p. 1203-1217.

Henckaerts, J. M. *Mass Expulsion in Modern International Law and Practice*. Nijhoff, La Haye/Boston, 1995, 257 p.

Henckaerts, J. M. The current status and content of the prohibition of mass expulsion of aliens. *Human Rights Law Journal*, 1994, p. 301-317.

Hollified, James F. Migrations and international relations: Cooperation and control in the European Community. *International Migration Review*, 1992.

Hotop, S. D. Judicial control of administrative discretion in the expulsion and extradition of aliens, in *Law and Australian Legal Thinking in the 1980s*, IACL, XII: Australian reports, p. 551-576.

Irizarry y Puente, J. Exclusion and expulsion of aliens in Latin America. *American Journal of International Law*, 1942, p. 252 et ss.

Jacques, André. Les déracinés : réfugiés et migrants dans le monde. Paris, la Découverte, 1985.

Jaeger, Gilbert. Irregular movements: The concept and possible solutions, in Martin D. A. (1988), p. 2348.

Karagiannis, Syméon. Expulsion des étrangers et mauvais traitements à l'État de destination ou à des particuliers. Vers une évolution de la jurisprudence européenne. *Revue trimestrielle des droits de l'homme*, 1999, t. 10, p. 33-88.

Kidd, J. Extradition and expulsion orders and the European Convention on Human Rights: the sobering decision and beyond. *Bracton Law Journal*, 1994, p. 67 et ss.

Koprolin, Eva. Introduction, in Guild. E. et P. Minderhoud (dir.), Security of residence and expulsion: protection of aliens in Europe. *Kluwer Law International*, La Haye/Boston, 2001, p. 3-6.

Labayle, Henri. Le contentieux des « expulsions dirigées » ou les prolongements de la jurisprudence Bozano au Palais-Royal. *RFDA*, janvier-février 1989, p. 3-45.

Lafférière, François Julien. Frontières des droits – L'introuvable statut de la zone internationale. Paris, l'Harmattan, ANAFE, 1993.

Laferrière, François Julien. Le mythe de « l'immigration zéro ». *L'actualité juridique – Droit administratif*, 20 février 1994, p. 83-95.

Lafférière, François Julien. Le traitement des réfugiés et des demandeurs d'asile au point d'entrée. *Revue universelle des droits de l'homme*, 1990, p. 53-58.

Laloupe, Francis. Un monde sans pitié! *Le nouvel Afrique-Asie*, 1996, p. 10-15.

Le Point. Zaire : le grand K. O. 29 juillet 1995, p. 32-37.

Lebullenger, Joël. À propos de l'expulsion des étrangers : les garanties de la procédure administrative en droit français et communautaire. *Revue critique de droit international privé*, 1981, p. 447-488.

Lein, Y. Nu'man, East Jerusalem: life under the threat of expulsion. B'Tselem, 2003, 33 p.

Lochak, Danièle. Étrangers : de quel droit? « Politique d'aujourd'hui ». Paris, PUF, 1985.

Lochack, Danièle. L'entrée et le séjour des étrangers en France : une législation sous influence. *L'actualité juridique – Droit administratif*, 20 octobre 1989, p. 586-597.

Luchaire, François. Le Conseil constitutionnel et la loi du 24 avril 1997 sur l'immigration. *R.D.P.U.*, 1997, n° 2, p. 931-964.

Lyon-Caen, Antoine. Étranger, immigré, immigrant : question de définition. *Revue de droit sanitaire et social*, n° 2, 1987.

Madureira, Joao. La jurisprudence des organes de la Convention européenne des droits de l'homme et de la Charte sociale européenne concernant l'entrée et la sortie des étrangers du territoire d'un État, communication au colloque « Droits de l'homme sans frontières », Strasbourg, 30 novembre-19 décembre 1989, 49 p.

Magistro, John-V. Crossing over: ethnicity and transboundary conflict in the Senegal River valley. *Cahiers d'études africaines*, n° 2, 1993, p. 201-332.

Malabre, Jean Eric. Security of residence and expulsion: protection of aliens in Europe: the French experience, in Guild, E. et P. Minderhoud (dir.), Security of residence and expulsion: protection of aliens in Europe. *Kluwer Law International*, La Haye/Boston, 2001, p. 125-137.

Marsh, A. H. Colonial expulsion of aliens: an answer. *American Law Review*, 246, 1899, p. 246-253.

Martin Griffin, W. Colonial expulsion of aliens. *American Law Review*, 1899, p. 90-95.

Martin, Scott-M. Non-refoulement of refugees: United States compliance with international obligations [prohibiting expulsion of refugees to territories where persecution would result]. *Harvard International Law Journal*, 1983, p. 357-380.

Martini, Alexis. L'expulsion des étrangers. Paris, 1909.

Masclet, Jean-Claude. Les politiques d'immigration dans la communauté. *Revue politique et parlementaire*, 1990, p. 59-79.

Middle East Reporter Weekly. Controversy over JRA deportation. n° 1090, mars 2000.

Middle East Reporter Weekly. Egypt, Sudan calm about Libya expelling workers. 16 septembre 1995, p. 15 et 16.

Miles, Robert. L'Europe de 1993, l'État, l'immigration et la restructuration de l'exclusion. *Sociologie et sociétés*, 1992, p. 45-57.

Minnesota Law Review. Constitutional restraints on the expulsion and exclusion of aliens. n° 440, 1952-1953, p. 441-458.

Modeen, Tore. Judicial control of administrative discretion in the expulsion and extradition of aliens. *Yliopistopaino*, 1986.

Morris, Maria V. The exit fiction: unconstitutional indefinite detention of deportable aliens. *Houston Journal of International Law*, t. 23, 2001, p. 255-304.

Nascimbene, Bruno. Expulsion and detention of aliens in the European Union Countries. Giuffrè, 2001.

Nguyen Van Yen, Christian. *Droit de l'immigration*. Thémis, Paris, PUF, 1986.

Novicki, Margaret-A. West Africa after the exodus, in *Africa-Report*, juillet-août 1985, p. 10-13.

Pacurar, Andi. Smuggling, detention and expulsion of irregular migrants: A study on international legal norms, standards and practices. *European Journal of Migration and Law*, n° 2, 2003, p. 259-283.

Peaucelle, Jean-Christophe. L'immigration et la libre circulation des personnes en Europe : enjeux et perspectives. *Revue française de droit administratif*, 1990, p. 516-524.

Pellonpää, Matti. Expulsion in international law: a study in international aliens law and human rights with special reference to Finland. *Annales Academiae Scientiarum Fennicae*, 1984, p. 489-506.

Pellonpää, Matti. Judicial control of administrative discretion in the expulsion and extradition of aliens, in *The final national reports to the twelfth Congress of the International Academy of Comparative Law, IACL*, XII, 1986, p. 133-171.

Perruchard, Richard. L'expulsion en masse d'étrangers. *Annuaire français de droit international*, 1989, t.34, p. 677-693.

Perruchard, Richard. L'expulsion en masse d'étrangers : étude de droit international. *ICHI*.

Pilling, Mark. Airlines Foot Bill for Illegal Entry. *International Aerospace Review*, septembre 1992.

Plender, Richard. *International Migration Law*, 2^e éd. revue et corrigée, Dordrecht, Martinus Nijhoff.

Plender Richard. Competence, European Community law and Nationals of Non-Member States. *International Comparative Law Quarterly*, 1990, p. 590-610.

Puéchavy, Michel. Le renvoi des étrangers à l'épreuve de la Convention européenne des droits de l'homme, in *Les mesures relatives aux étrangers à l'épreuve de la Convention européenne des droits de l'homme : actes du séminaire du 21 mai 2003*. Pierre Lambert et Christophe Pettiti (éd.), 2003.

Rewald, R. Judicial control of administrative discretion in the expulsion and extradition of aliens. *American Journal of Comparative Law*, 1986, p. 451-465.

Ricca, Sergio. Migrations internationales en Afrique : aspects légaux et administratifs. Harmattan, 1990, 280 p.

Ricci, Marco. A legislative outline of Italian regulations governing foreigners: regulation in force and new proposals. Italy, Documents and note, octobre-décembre 1985, p. 15-31.

Rocard, Michel. La compétence constitutionnelle du juge administratif et la police des étrangers. *RFDA*, n° 5(4), juillet-août 1989, p. 691-703.

Rogers, A. Exploitation v. expulsion: the use of expedited removal in asylum cases as an answer to a compromised system. *William Mitchell Law Review*, 1998, p. 785-821.

Rohmer, Florence Benoît. Reconduite à la frontière : développements récents. *R.D.P.U.*, 1994, n°1, p. 427-478.

Rondepiene, Jean. Statut des étrangers : entrée, séjour, expulsion, naturalisation, cartes du travailleur et de commerçant, obligations des employeurs : textes, commentaires, jurisprudence, conventions internationales. Imprimerie administrative centrale, Paris, 1953, 190 p.

Rupnik, Jacques et Anne Bazin. La difficile réconciliation tcheco-allemande. *Politique étrangère*, n° 2, avril 2001, p. 353-370.

Sieveking, Klaus. Security of residence and expulsion: the German experience, in Guild, E. et P. Minderhoud (dir.), Security of residence and expulsion: protection of aliens in Europe. *Kluwer Law International*, La Haye/Boston, 2001, p. 105-123.

Silvers, Samuel, M. The exclusion and expulsion of homosexual aliens. *Columbia Human Rights Law Review*, 1983-1984, p. 295-332.

Stenberg G. Non-expulsion and non-refoulement: the prohibition against 32 and 33 of the 1951 Convention relating to the status of refugees. Uppsala, Iustus Förlag, 1989, 309 p.

Swindell, Kenneth. International labour migration in Nigeria 1976-1986: employment, nationality and ethnicity. *Migration*, n° 8, 1990, p. 135-155.

Teitgen-Colly, Catherine. Le droit d'asile : la fin des illusions. *L'actualité juridique - Droit administratif*, 20 février 1994, p. 97-114.

Teitgen-Colly, Catherine et François Julien Laferrière. Loi n° 98-349 du 11 mai 1998 relative à l'entrée et au séjour des étrangers en France et au droit d'asile. *L'actualité juridique - Droit administratif*, 20 novembre 1998, p. 922-930.

Thayer, Nate. Hostile home: Vietnamese fear expulsion under new law. *Far-Eastern Economic Review*, 13 octobre 1994, p. 20 et 21.

Toth, Judith. Security of residence and expulsion: protection of aliens in Hungary, in Guild, E. et P. Minderhoud (dir.), Security of residence and expulsion: protection of aliens in Europe. *Kluwer Law International*, La Haye/Boston, 2001, p. 165-174.

Turpin, Dominique (dir.). Immigrés et réfugiés dans les démocraties occidentales - Défis et solutions. Paris, Economica, 1989.

Turpin, Dominique (dir.). La réforme de la condition des étrangers par les lois des 24 août et 30 décembre 1993 et par la loi constitutionnelle du 25 novembre 1993. *Revue critique de droit international privé*, 1994, p. 1-61.

Turpin, Dominique. La réforme de l'ordonnance du 2 novembre 1945 sur la condition des étrangers par la loi du 10 janvier 1980. *Revue critique de droit international privé*, 1980, p. 41-57.

Turpin, Dominique. Les nouvelles conditions de l'expulsion des étrangers. *R.F.D.A.* n° 2 (2), mars-avril 1986, p. 137-154.

Twaddle, M. Expulsion of minority: essays on Ugandan Asians, Athlone Press. London, 1975, 240 p.

Vigroux-Echegut, Muriel. Le contrôle de la qualification juridique des faits dans le contentieux de l'expulsion des étrangers. *Revue trimestrielle des droits de l'homme*, 2000, t. II, p. 479-502.

Vincent, J. Y. La réforme de l'expulsion des étrangers par la loi du 29 octobre 1981. *Semaine juridique*, 1982, p. 3054.

Wilsher, Daniel. The Administrative Detention of Non-Nationals Pursuant to Immigration Control: International and Constitutional Law Perspectives. *The International and Comparative Law Quarterly*, 2004, t. 53, p. 897-934.

White, R. C. A. Procedural guarantees and expulsion. *European Law Review*, 1996, p. 241-246.

Woods, L. Consequences of TRNC-expulsion of Greek Cypriots, article 8-home right to culture, article 1 of protocol 1 – treatment of remaining Greek Cypriots and Cypriot Gypsies, article 2 – right of life, missing persons, access to medical treatment, article 3, article 5 – lack of education. *The British Yearbook of International Law*, 2001, p. 493-504.

Woods, L. Right to receive medical treatment – inhuman and degrading treatment-expulsion of aliens. *The British Yearbook of International Law*, 2001, p. 513-516.

II. Documents internationaux

A. Organisations européennes

Communauté européenne (Commission), Communication de la Commission au Conseil et au Parlement européen sur les politiques d'immigration et d'asile, 23 février 1994, Doc. COM (94) 23 final, 94 p.

Communauté européenne (Conseil), Communication à la presse sur la réunion des ministres chargés de l'immigration, 2 juin 1993, 6712/93, 6 p.

Communauté européenne (Conseil), Déclaration sur les principes régissant les aspects extérieurs de la politique migratoire, 11 et 12 décembre 1992, Informations européennes, n° 17/1993-01.

Communauté européenne (Parlement européen), Rapport de la Commission des libertés publiques et des affaires intérieures sur la politique européenne en matière d'immigration (Rapport Van den Brink), 2 octobre 1992, Doc. FR/RR/215 215158-cj, 27 p. Voir la résolution A3-0280/92 du 18 novembre 1992 du Parlement européen.

Conseil de l'Europe : Sanctions imposées aux transporteurs dans quatre États des communautés européennes : leur compatibilité avec les règlements de l'aviation civile internationale et avec les droits de l'homme (Rapport Cruz), rapport du Comité ad hoc d'experts sur les aspects juridiques de l'asile territorial, des réfugiés et des apatrides [CAHAR (90)], 20 p.

Conseil de l'Europe : Rapport sur l'exode des ressortissants albanais (Rapport Bühm), rapport à l'Assemblée parlementaire, 27 janvier 1992, Doc. 6555, 12 p.

Conseil de l'Europe : Rapport sur les flux migratoires en Tchécoslovaquie, en Hongrie et Pologne (Rapport Guirado et Szelenyi), rapport à l'Assemblée parlementaire, 16 juin 1992, Doc. 6633, 15 p. Voir la recommandation n° 1188 de l'Assemblée parlementaire du Conseil de l'Europe.

Conseil de l'Europe : Rapport sur les migrations clandestines : passeurs et employeurs de migrants clandestins (Rapport Pahtas), 26 avril 1993, Doc. 6617, 24 p.

Protocole n° 4, tel que modifié par le Protocole n° 11.

B. Consultations intergouvernementales sur les politiques d'aide aux réfugiés et de migration en Europe, en Amérique du Nord et en Australie

Orientation de la coopération multilatérale. Réunion plénière des consultations, Niagara-on-the-Lake, 29 et 30 juin 1992, Doc. n° 07/92.

Removal policies with respect to infected asylum-seekers. Réunion plénière des consultations, Niagara-on-the-Lake, 29 et 30 juin 1992.

Développement des échanges d'information. Réunion plénière des consultations, Niagara-on-the-Lake, 29 et 30 juin 1992.

Country of origin information (focal points). Réunion plénière des consultations, Niagara-on-the-Lake, 29 et 30 juin 1992, Doc. n° 6/Add/92, 21 p.

Background to assessment approach. Réunion plénière des consultations, Niagara-on-the-Lake, 29 et 30 juin 1992, Doc. n° 07/92.

Statistical tables, Doc. n° 08/92.

Report on Country Assessment approach Working Group in Ghana. Réunion plénière des consultations, Niagara-on-the-Lake, 27 juin-1^{er} juillet 1992, 23 p.

C. Groupe ad hoc sur l'immigration

Rapport des ministres de l'immigration au Conseil européen de Maastricht sur la politique d'immigration et d'asile, 3 décembre 1991, Doc. SN 4376/91 WGI, 941 AS 103, 15 p. (document confidentiel).

Projet de recommandation concernant les pratiques des États membres en matière d'éloignement, 8 décembre 1992, Doc. 4678/I/92 WGI 1266 Rev., 11p.

Projet de recommandation concernant le contrôle et l'éloignement des ressortissants de pays tiers séjournant ou travaillant illégalement, 25 mai 1993, Doc. WGI 1516, 6 p. Adopté à la réunion ministérielle de Copenhague du 1^{er} juin 1993.

D. Haut Commissariat des Nations Unies pour les réfugiés

Position du Haut Commissariat des Nations Unies pour les réfugiés concernant les résolutions adoptées le 30 novembre 1992 par les ministres des États membres des communautés européennes responsables de l'immigration sur les demandes d'asile manifestement infondées, les pays d'accueil et les pays où il n'y a en règle générale aucun risque grave de persécution. Documentation-Réfugiés, n° 212 (16-29 mai 1993).

The Haitian interdiction case 1993 – Brief Amicus Curiae, 21 décembre 1992 (1994), *International Journal of Refugee Law*, p. 85-102.

Position du Haut Commissariat des Nations Unies pour les réfugiés sur le projet de loi relatif à la maîtrise de l'immigration et aux conditions d'entrée des étrangers en France, 6 juillet 1993, Doc. réf. n° 220.

E. Organisation pour la coopération et le développement en Europe

Tendances des migrations internationales. 1992 (Rapport Sopemi), 163 p.

F. ONU/Conseil économique et social

Commission on Human rights (S.Aga Khan), Study on human rights and massive exoduses (1981).

Document de travail sur les droits des non-ressortissants (E/CN.4/Sub.2/1999/7) (1999).

United States, report under the international covenant on civil and political rights (July 1994).

International Provisions Protecting the Human Rights of Non-Citizens (*United Nations publications, Sales No. E.80.XIV.2*).

G. Amnistie internationale

Australia-Pacific offending human dignity-the « pacific solution », <<http://web.amnestyusa.org>>.

United Nations Committee's recommendations to Lebanon ..., <<http://web.amnestyusa.org>>.

Cambodia: Refugee protection in crisis, <<http://web.amnestyusa.org>>.

France: Deaths during forcible deportation from Roissy must be fully and impartially investigated, <<http://web.amnestyusa.org>>.

Bali Ministerial Conference on people smuggling, trafficking in persons and transnational crime must address human rights concerns, <<http://web.amnestyusa.org>>.

Libya: Imminent deportation of Eritrean army deserters, <<http://web.amnestyusa.org>>.

Supreme Court rules in two immigration cases..., <<http://web.amnestyusa.org>>.

Iraq: Compulsory return must not be imposed on Iraqi asylum seekers, <<http://web.amnestyusa.org>>.

Hundreds of Afghan refugees forcibly removed from Iran, <<http://web.amnestyusa.org>>.

An agenda for human rights protection, <<http://web.amnestyusa.org>>.

H. Organisation des États américains

Commission interaméricaine des droits de l'homme, Progress report of the office of the rapporteur on migrant workers and their families in the hemisphere, <<http://www.cidh.oas.org>>.

III. Textes nationaux

A. France

Ordonnance du 2 novembre 1945 consolidée, modifiée et complétée par la loi n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers et à la nationalité.

Arrêté du 26 février 2004 du Ministre de l'intérieur, de la sécurité et des libertés locales portant expulsion de M. Bouziane du territoire français.

B. Cameroun

Loi n° 97/012 du 10 janvier 1997, fixant les conditions d'entrée, de séjour et de sortie des étrangers au Cameroun.

Décret n° 2002/003 du 4 janvier 2002 portant organisation de la Délégation générale à la sûreté nationale.

IV. Jurisprudence

A. Cour européenne des droits de l'homme

N° 36757/97, 6 février 2003, Jakupovic c. Autriche : déportation d'un jeune de 16 ans en Bosnie-Herzégovine où il n'a pas de proches (violation de l'article 8 de la Convention européenne des droits de l'homme).

N° 37295/97, 31 octobre 2002, Yildic c. Autriche : expulsion d'un étranger à la suite de condamnation et séparation consécutive de celui-ci d'avec son épouse et son enfant (violation de l'article 8).

N° 52853/99, 17 avril 2003, Yilmaz c. Allemagne : expulsion d'un immigrant de deuxième génération (violation de l'article 8 de la Convention européenne des droits de l'homme).

N° 56132/00, 23 juillet 2003, Taskin c. Allemagne : ressortissante étrangère risquant d'être séparée de sa famille en raison de son expulsion (article 8, affaire radiée).

N° 51564/99, 5 février 2002, Conka et autres c. Belgique : ressortissants d'origine slovaque tzigane placés en détention en vue de leur expulsion alors qu'ils avaient été convoqués par la police pour accomplir des formalités (violation des articles 5 et 4 et des articles 13 et 4 du Protocole n° 4).

N° 50963/99, 20 juin 2002, Al-Nashif et autres c. Bulgarie : impossibilité de contester la légalité d'une détention dans l'attente d'une décision d'expulsion (violation des articles 5 et 4) : expulsion entraînant la séparation d'une famille (violation de l'article 8); absence de tout recours effectif (violation de l'article 13).

N° 56811/00, 11 juillet 2002, Amrollahi c. Danemark : étranger risquant d'être séparé de son épouse et de ses enfants en raison de l'arrêté d'expulsion pris à son encontre à la suite d'une condamnation (violation de l'article 8).

N° 53441/99, 10 juillet 2003 (section 5) Benhebba c. France : expulsion d'un étranger après une longue période de résidence (violation de l'article 6 de la Convention européenne des droits de l'homme).

N° 52206/99, 15 juillet 2003, Mokrani c. France : menace d'expulsion d'un immigrant de deuxième génération (violation de l'article 8 de la Convention européenne des droits de l'homme).

N° 53470/99, 10 avril 2003, Mehemi c. France : temps mis à autoriser le retour d'un ressortissant étranger à la suite de la conclusion de la Cour selon laquelle l'expulsion avait emporté violation de l'article 8 et refus de lever l'interdiction de territoire (article 8). Non-violation.

N° 40226/98, 29 juillet 2003, Cervenáková c. République tchèque : éviction de ressortissants slovaques de leurs domiciles (violation des articles 3 et 8 de la Convention européenne des droits de l'homme).

N° 48321/99, 9 octobre 2003 (Grande chambre), Slivenko c. Lettonie : déportation, dans le contexte du retrait des troupes russes, de l'ancien officier militaire, de sa femme et de sa fille, qui avaient toujours vécu en Lettonie (violation des articles 6 et 1 de la Convention européenne des droits de l'homme).

N° 57374b/00 et N° 57575/00, 8 novembre 2002 : expulsion de familles d'origine tsigane vers la Bosnie-Herzégovine (violation des articles 3 et 13, article 4 du Protocole – règlement à l'amiable).

B. Commission interaméricaine des droits de l'homme

Rapport n° 6/02, pétition 12-071, 27 février 2002 : 120 ressortissants cubains et 8 ressortissants haïtiens détenus aux Bahamas. Recevabilité.

Rapport n° 07/02, pétition 11 661, 17 février 2002, Manickavasagam Suresh c. Canada. Recevabilité.

Rapport n° 51/01, case 9903, 4 avril 2001, Rafael Ferrer Mazorra *et al.* c. États-Unis.

C. Commission africaine des droits de l'homme et des peuples

Communication 234/99 et 233/99, Interights (pour le compte de Plan Movement et Inter-Africa Group) contre, respectivement, l'Érythrée et l'Éthiopie.

Communication 71/92, Rencontre africaine pour la défense des droits de l'homme c. Zambie.

Communication 133/94, 6 novembre 2000, Association pour la défense des droits de l'homme et des libertés c. Djibouti

Communication 234/99, 29 mai 2003, Interights (pour le compte de Pan-African Movement et Inter-Africa Group) c. Érythrée.

Communication 212/98, 5 mai 1999, Amnesty International c. Zambie.

Communication 73/93, 11 mai 2000, Mohamed Lamine Diakité c. Gabon.

Communication 219/98, 11 mai 2000, Legal Defense Centre c. Gambie.

Communication 97/93, 6 novembre 2000, John K. Modise c. Botswana.

Communication 239/2001, 16 mai 2002, Interights (pour le compte de José Domingos Sikunda) c. Namibie.

Décisions de la vingt-septième session ordinaire, 73/92, 11 mai 2000, Mohamed Lamine Diakité c. Gabon.

D. Comité des droits de l'homme des Nations Unies

Communication n° 1011/2001, Australie, 26/08/2004, CCPR/C/81/D/10011/2001, affaire Madafferi.

Communication n° 236/1987, Canada (État partie) : refus de se conformer à un arrêté d'expulsion pris en application de la loi canadienne sur l'immigration. Décision : irrecevabilité.

Communication n° 296/1988, Costa Rica (État partie) : expulsion hors du Costa Rica d'une personne apatride. Décision de recevabilité : 30 mars 1989.

Communication n° 193/1985, République dominicaine (État partie) : expulsion de la victime vers un pays tiers par les autorités de l'État partie alors qu'elle se trouvait en transit sur son territoire. Adoption des constatations : 20 juillet 1990.

Communication n° 291/1988, Finlande (État partie) : détention de l'auteur en vertu de la loi sur les étrangers en attendant son extradition vers le pays d'origine.

Communication n° 58/1979, document de l'ONU, Jorge Landinelli Silva *et al.* c. Uruguay, 9 avril 1981.

Communication n° 1069/2002 : Australie, 6/11/2003.

Communication n° 1051/2002 : Canada, 14/06/2004.

Communication n° 829/1998 : Canada, 20/10/2003.

Communication n° 743/1997 : Canada, 5/05/2003.

Nations Unies, Recueil des sentences arbitrales, t. X, Commission italo-vénézuélienne, affaire Boffolo.

E. Juridictions nationales

France

CE, 20 09 2004, Ministre de l'intérieur, de la sécurité et des libertés locales c. M. Bouziane (Confirmation de l'arrêté d'expulsion).